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DOGMATISM AND SKEPTICISM IN LAW—A REBUTTAL

THOMAS M. QUAYLE*

An article by Mr. Lee Loevinger which appeared in this Law Review last spring,[1] expressed a philosophy of law that is contrary to that held by this writer and many of his colleagues who are in the practice of law. The philosophy of that article is felt to be the underpinning of the materialistic forces that at this time comprise the government of over a third of the world's people. The thoughts of the article are those advanced so well by Justice O. W. Holmes. It is essentially the Godless law of force and power. The idea is that right is the resultant of might. I was distressed at the article for the reason that it was a direct intellectual attack upon the views that I have held for many years. I have been educated to and now believe in another concept of the nature of the relationship between the governed and the government. However, inasmuch as the views held by Loevinger are likewise held by a not inconsiderable portion of mankind, I have felt it necessary to reexamine my position and to reflect upon its validity. I have again read and studied the writings of the men who have expressed their considered views upon the problem, and who are held by many of the learned of the earth to have been men of learning and ability. And more than this, I have devoted my capacity to reason. I have thought, analyzed, read and listened to those who seemed to have an opinion on the matter. From all this has proceeded my current opinion that the views which I held prior to this latest effort are sound and supportable in logic and reason; and conversely that the philosophy expressed by Mr. Loevinger is incorrect and not supportable in reason or logic. For if any statement be true, it is that the views held by myself and those held by Loevinger are not compatible.

In the belief that many of my colleagues in the legal profession agreed with my views, I prepared this article as a statement of position in opposition to the materialistic skepticism advocated in the article by Loevinger. I felt that it was necessary to do so because the physical agony of armed conflict among men is merely the outward manifestation of the conflicting philosophies and ideas which support each camp. In this time of the cold war, the ideology that will attract and hold men should be sought for as a necessity to survival from the slavery of body and mind that results from

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1. Loevinger, *Dogmatism and Skepticism in Law*, 38 Minn. L. Rev. 191 (1954).

an adoption of the tenets of the skeptical tyrants. The statement that the truth will make you free was no truer when Chaucer wrote than it is now.

It has been said that a generality is valid only insofar as the particulars that support it are valid. An application of this idea establishes the requirement that I specifically delineate and call attention to the portions of the Loevinger article with which I disagree. This in effect will be a sort of pleading in the cause.

The first portion that I call attention to is the part of the article where the author refers to the natural attractions of the natural law theory of legal philosophy.[2] To quote some of the pertinent phraseology:

> "Indeed, 'natural law' offers us a kind of legal heaven wherein error will not exist and law, morality and justice will coincide completely. Furthermore, once we have discovered any principle of 'natural law' it will be the same for all men and for all time. One of the characteristics of 'natural law' is that it remains the same for all men everywhere. Thus the problem of uncertainty in the law is eliminated by the simple expedient of making the law certain and unchanging."[3]

Now, this statement and the one immediately preceding it in the article convey an erroneous impression of the concept of the natural law theory. The natural law is absolute and unchanging; to say this is to state the truth, but it also must be borne in mind that the law, as a concept, and its application to a specific problem are two different ideas. A statute enacted by the Legislature of the State of Minnesota is the law in the entire state, in the northern counties as well as in the southern. The statute will read the same as long as its words are there to read, no matter where it may be found. It is the law of the state for as long as it remains unrepealed. But we will find innumerable instances where the same statute has been and will be applied differently in different situations. In one case, before the district court in one county, the act will be applied; and then in a fairly similar situation in another part of the state the act will not be applied. This will be explained, and validly so, on the ground that the fact situation is different in each case. Here is a field similar to that of the application of the natural law. The law as a concept is unchanging for all men at all times in all places, but

2. Here, in parentheses I suppose, I should state that the use of quotations to surround the words "natural law" in the article is an unfair attempt to belittle an entire school of thought. The use of these punctuation marks is an apparent attempt to convey to the reader an idea that the author will not express directly. I do not know what was meant, but feel that it is an attempt to be cynical rather than skeptical.

3. Loevinger, *supra* note 1, at 199.

it is the fact situation, the circumstances, the people, the situation in particular that will cause an apparently different result to be attained in accord with the same natural law. Of course, there may be error in the application of the natural law to a given situation. There is no freedom from error in anything that is done by man, and it is man that must apply the natural law principles to the facts which he must discover. As Loevinger states, law, morality and justice will coincide. What he does not explain is that the discovery of law, morality and justice in a given particular situation must still be the work of man and subject to all of the frailties associated with the species. Indeed, the discovery of the fact situation in which it is desirable to apply law, morality and justice is fraught with error. As every lawyer knows, it requires an effort to discover the facts.

The next specific utterance that I wish to allege in issue here is as follows:

> "Thus it comes to this: that 'natural law' is anything which one who asserts its existence intuitively apprehends, strongly believes in or stoutly asserts."[4]

This statement and the one preceding it in the article are just as erroneous as the one we have just discussed. Now here is an expression of the philosophy of the skeptic. It is the idea that if a thing or an idea is, it is correct, right, just, fair and acceptable in reason. Here is the acceptance of an idea because someone has said that it is there. This is not the theory of the natural law. The true student of the natural law does not believe that an absolute and unchanging immutable principle will be adjustable to the intuition of each man who professes a stand. The vigor with which a position is asserted also has nothing to do with the validity in reason of the principle. The number of times that a principle is asserted, the number of people who assert it; the number of decibels of sound with which it is asserted; the strength of the mechanical devices that are used to spread the word; the permanence of the paper or film on which a principle is recorded; all these have absolutely no effect on the reasonable validity of the principle. All the tools of modern and ancient propaganda may be used to spread further the idea without affecting the truth one iota. Intuition is present as it is in all thinking, and this intuition will tell a man thngs. Intuition is conscience, it is training, it is the resultant of innumerable stimuli that have been impressed upon and stored in the mind. It is an inseparable part of reason, and as such, it plays some part in the

4. *Id.* at 203.

attempt to apply the natural law to a given situation. Intuition, however, is not the fundamental basis of the natural law. It is rather a minor insignificant adjunct of the reason. Joe Goebbels has espoused the other part of this statement and his reasoning relative to the vigor of assertion has been adequately answered by history. I only ask the reader to decide whether there is an effect upon truth by the strength of the decibels used in assertion.

The next specific statement that I take into issue is in these words:

> "Thus 'natural law' offers its disciples not only the glory of eternal and immutable superlatives, but also the repose of knowledge acquired without investigation and certainty achieved without private doubt or public debate. A proposition offered as the conclusion of either an individual or a group is always subject to questioning and refutation. But a proposition offered as a principle of 'natural law' is, simply by definition of the one who offers it, beyond questioning and immune to refutation."[5]

Again, if I may be permitted an observation, this statement is not the correct position taken by the proponents of the natural law. I for one certainly do not accept or adhere to the idea that any legal or philosophical proposition is above debate or consideration by the public. The public must be free to engage in debate within the bounds of reason thus far established by the Supreme Court in the field of Constitutional Law. I will always defend the right of anyone to disagree, to argue, to state his position, to examine the basis in reason and logic for an idea. The principles of the natural law have been subjected to the scrutiny of the finest minds that mankind has produced. Skeptics like Loevinger have been at it for a long time, and others like the writer here have spoken on the matter. Where is the lack of a public debate on the matter? The publication of the papers by Loevinger and this writer show the existence of public exposition of at least two separate comments on the natural law.

As to private doubt, I can say that I have had private doubts; I have often wondered about the manner in which I was applying the principles of the natural law to a given situation. I have had doubts that I was acting in conformance to the immutable principles of the natural law. This did not for a moment mean to me that the principles were not there, or that they were not absolute and unchanging. The doubt was as to my intellectual capacity to understand all the facets and ramifications of the situation to which I

5. *Id.* at 204.

was about to apply the principle, and whether under the circumstances which confronted me the principle that I was applying was the correct one.

To move on to other items of the pleadings, there is this statement by Mr. Loevinger:

> "The difficulty with the assurance that is offered by 'natural law' theories is that even when all their assumptions are accepted there is no available methodology for ascertaining the content of the universal principles from which such assurance flows. . . . Whatever other function it may have, it is practically useless as a guide to decision and action in a mundane system of civil law."[6]

Here is the cry for the justicestick, the demand for the tools. Here is the voice of one crying that because there is disagreement as to the application of the principle there is no principle. To him I reply that he should search the history of the English law to find the foundation of the law of negligence, "A reasonable man acts as a reasonable and prudent man would under the same or similar circumstances." Here is a principle of the civil law of negligence. But courts have still not been able to tell how to find a reasonable man. Does this mean that there are no general principles of the law of negligence? Why should a man come into Equity with clean hands? Why should a trustee handle his trust as a prudent man would handle his own funds? Why is there such a concept as quantum meruit? Where is the fount of these and other similar ideas of the law? What do the Federal Rules mean when they authorize the court to make such orders as justice may require in several instances? Who can tell whether a man is or is not negligent in a particular situation? Who can tell whether a man has clean hands as he comes into Equity? Who can tell if a trustee acted as did a prudent man with his own funds? Who can tell whether there has been unjust enrichment? Who is to test the justice of a court order? It seems to the writer that the inception of all these legal ideas came from an attempt to apply the principles of the natural law to specific cases, and then the principle of stare decisis was used to avoid any allegience to the real base. The natural law has spawned a child, but the friends of the child were ashamed of the parentage of it and so have substituted a fictitious father and mother. Pound was correct when he stated that the number of problems that required applications of the natural law to their solution was not large.[7] It is of no concern to the natural law if

6. *Id.* at 204-205.
7. Pound, *The Heated Judicial Dissent*, 39 A. B. A. J. 794, 796 (1953).

we drive on the right or on the left of the road; if the tax is levied on a tonnage basis or ad valorem. The great majority of the daily problems confronting the courts have no need for natural law principles. But they are needed when the question before the court involves moral issues, or when the question before the court involves matters of ethics or religion. When the terms "substantial justice" come into the court, then the principles of the natural law must be, and generally are applied.

The next phase that I apply to these pleadings is the following statement:

> "The difficulty with such a situation is that the belief in and search for absolutes blinds us to the facts of life."[8]

On the contrary, the belief in and search for absolutes intensifies the effort to discover the facts of life, for if the principle is, as I stated previously, absolute, immutable and forever static, then the effort of the intellect need not be expended in a search for the principle, and more effort can be delivered to the search for the truth in regard to the factual situation. Then the facts of life become all important. The factual situation is the beclouded part of the problem. What are the facts of life? What are the facts in the particular situation that now confronts us? These are then the all important problems. Because in the past, and even now, people have been and now are mistaken as to certain facts does not mean that this is because they believe in the absolute as a concept. Loevinger states that motion is relative. This means that it is relative to something, and that this something is the measuring tool which is used to describe motion. But if the measuring tool is not an absolute then the relativity means nothing. In the same paragraph, he refers to "up" and "down" as being absolute concepts. It seems clear to me that these terms are terms of direction and as such are totally meaningless unless the measuring tool is indicated. Here again is relation. But we must always ask the question; "Relative to what?"

Mr. Loevinger's reference to the cosmic wild goose chase and the poll of the angels[9] needs this answer. In Germany in the early

8. Loevinger, *supra* note 1, at 209.

9. "It is not enough for the absolutist philosopher that all of mankind approve a law, he insists that we take a poll of the angels.

". . . [T]he best proof that something is desirable is the fact that someone desires it; and that it is socially desirable, the fact that most people desire it.

". . . [T]he belief in absolutes takes us on a cosmic wild goose chase and prevents study and recognition of the observable facts of actual life." *Id.* at 210.

part of this century, it was the accepted, desirable process for the government to follow a policy of genocide with reference to the Jews. There was also a concept of the super race of Nordic and Aryan extraction that was corollary to this idea. Here were most of the people who had anything to say "desiring" this type of governmental effort. Here was human experience and human judgment furthering a policy of extermination of a race because it was national policy. This was spread by Goebbels as loud as could be done. Measured against the human standards of the government at the time and the place where the facts were occurring, the conduct was acceptable and desirable. Measured against the immutable principles of the natural law, those principles that recognize that there is a relationship between responsibility and authority, between control and answerability, measured against these principles, the actions were wrong, unjust and incorrect in the moral and legal order and he who obeyed did not obey the law for the law conflicted with the governmental policy and decree.

Another idea of Loevinger's that I want to call to the attention of lawyers is this. He states that there is little significance in abstract theorizing and speculation in the law. I disagree completely with this statement of idea. I think that the problems of the world with regard to war, peace and government are the result of legal speculation by philosophers. As I stated earlier, the fundamental basis of much of our law is grounded initially on the attempt of the early judges to find and apply the principles of the natural law to a specific legal problem. A corollary might be drawn between the law of trusts, for instance, and the way in which it has influenced the actions of men for centuries; and the economic philosophizing of Karl Marx, whose ideas have led to the enslavement of over one-third of the world's people. I have purposely left until the last the reference to totalitarianism that is mentioned in the article of Loevinger. Here then is the statement:

> "Yet the most totalitarian of contemporary governments is firmly devoted to a 'natural law' ideology."[10]

Assuming that the reference is to Russia, I state that the first edition of Marx's book bears little resemblance to Russia of today as I understand it to be. I also have examined the *Communist Manifesto,* which is closer to the ideology of the Russians than is Marx's *Capital.* In the *Manifesto* there is a direct statement of the connection between the capitalist state and the natural law concept. This is the language of the *Manifesto*, written by Marx and Engels:

10. *Id.* at 202.

"The selfish misconception that induces you to transform into eternal laws of nature and of reason the social forms springing from your present mode of production and form of property—historical relations that rise and disappear in the progress of production—this misconception you share with every ruling class that has preceded you."[11]

I ask the reader to peruse this and the other writings and actions of the Soviets and to then decide whether the Russians are firmly committed to the natural law philosophy. The answer must be no. They are even more firmly addicted to the principles of the expedient and the force philosopher than were Hitler and his ilk. The test which they use is the strength of the opposing artillery.

Later in this article, I shall have occasion to refer again to the writings of various writers of philosophy on the natural law. However, this is an appropriate time to point up the difference between the attitude of the skeptics and that of the natural law people. Let me direct the reader's attention to the work of Aquinas. He states:

"I answer that, as stated above the precepts of the natural law are to the practical reason what the first principles of demonstrations are to the speculative reason; because both are self-evident principles. Now a thing is said to be self-evident in two ways: first, in itself; secondly, in relation to us. Any proposition is said to be self-evident in itself if its predicate is contained in the notion of the subject, although to one who does not know the definition of the subject it happens that such a proposition is not self-evident. For instance, this proposition, Man is a rational being, is, in its very nature, self-evident, since who says man, says a rational being; and yet to one who does not know what a man is this proposition is not self-evident. Hence it is that, as Boethius says, certain axioms or propositions are universally self-evident to all; and such are those propositions whose terms are known to all, as, Every whole is greater than its part, and, Things equal to one and the same are equal to one another. But some propositions are self-evident only to the wise, who understand the meaning of the terms of such propositions: thus to one who understands that an angel is not a body, it is self evident that an angel is not circumscriptively in a place; but this is not evident to the unlearned, for they cannot grasp it.

Now a certain order is to be found in those things that are apprehended by man. For that which, before anything else falls under apprehension, is being, the understanding of which is included in all things whatsoever a man apprehends. Therefore the first indemonstrable principle is that the same thing cannot be affirmed and denied at the same time, which is based on the

11. Communist Manifesto, Chap. II.

notion of being and not-being; and on this principle all others are based, as is stated in the Metaphysics. Now as being is the first thing that falls under the apprehension absolutely, so good is the first thing that falls under the apprehension of the practical reason, which is directed to action; for every agent acts for an end, which has the aspect of good. Consequently the first principle in the practical reason is one founded on the notion of good, namely, that the good is what all desire. Hence this is the first precept of law, that good is to be pursued and done, and evil is to be avoided. All other precepts of the natural law are based upon this, so that whatever the practical reason naturally apprehends as man's good belongs to the precepts of the natural law as something to be done or avoided.

"Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Therefore the order of the precepts of the natural law is according to the order of natural inclinations. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances; that is, every substance seeks the preservation of its own being, according to its nature. And by reason of this inclination, whatever is a means of preserving human life and of warding off its obstacles belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals. And in virtue of this inclination, those things are said to belong to the natural law 'which nature has taught to all animals', such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him; thus man has a natural inclination to know the truth about God, and to live in society. And in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination."[12]

Here then is one way to point up the controversy. Another is to go to the problem that was used to indicate the necessity for an examination into the moral basis for obedience to the law. The question seems to be one involving the right of an individual to refuse obedience to an apparently valid command. There are other ways of phrasing the issue, here are some of them.

"Does an individual have a right to refuse obedience to a command of the state because to obey would violate his personal moral code? Is it right to compel obedience to a command of the state

12. Summa Theologica, Part I of Second Part, Q. 94, Art. 2.

which violates a personal moral code? Is it right or does the correct concept of justice require obedience to a command of the state which violates a personal moral code?"

The answer of the skeptics to this issue is that no personal moral code can be invoked validly when it conflicts with the moral code of organized society as expressed in a duly enacted piece of legislation. They say that this is so because any moral tenet or belief held by any individual may be in error; the tenets, the moral code of the state or legislator may be in error also, but the individual should yield to the command of the state because two heads are better than one. Stated in other terms: all ideas are probably in error, so in selecting the concept which most nearly represents the truth, the idea of the legislator must be accepted because:

1. More people participate in formation of the idea.
2. More people support the idea.
3. The existence of government depends upon obedience to law.
4. For the benefit of all, each must surrender part of his indidividual freedom.
5. Avoidance of a physical sanction follows obedience.
6. It is unjustifiable arrogance to say, "I am right, and the whole of organized society, as represented by that law, is wrong."

These are powerful arguments, and they are compelling. However, they can be refuted.

As it applies to a particular situation, a particular piece of legislation is either just or unjust if those terms mean anything. In the same situation, an individual's refusal to obey is either right or wrong if those terms mean anything. To determine whether a statute or other course of action of government is just or unjust in a particular situation, or to discover whether an individual's action is right or wrong in a particular situation, it is necessary that we provide a standard of measurement against which we may lay the situation to determine the answer. What is the measure of just and unjust? From whence springs this standard? The skeptic says the standard is within the law; from the fact of existence, from the nature of promulgation, because of the reasons listed above. the statute must be conclusively presumed just as against the contention of any individual.

A thing cannot be a measure of itself. The terms, "measure", "standard" and "conformance", imply an external, unchanging being into which an intellectual situation either fits or does not. To

hold otherwise is to work in measurement with an elastic yardstick causing the term "yard" to be meaningless and futile.

Where is the justicestick? Produce it and demonstrate its validity, its existence and its form. Thus cries the skeptic.

The reader can understand how the universe and all that it contains physically, intangibly, intellectually and known and unknown to man has been and is created, ordered, set in motion and controlled. Man possesses understanding, and his understanding has enabled him to comprehend and use the surroundings in which he is placed. He can and does use the elements of physical existence to his advantage. These have been discovered by him from the use of his reason and understanding. By his intellectual endeavor he has derived knowledge of the rules of God in regard to gravity, friction, and the interaction of the elements. These are the laws of nature.

Similarly, the Creator established an order among men. He set down rules which govern the relationships between men. Conduct among men toward each other follows a pattern, and is in accord with and conforms to the rules of God just as certainly as the elements are controlled in their relationships, with but one distinction. This distinction, this quality which distinguishes man from the other items found in creation, in the respect which we now consider is this: Man possesses a free will whereby he has been given the power to choose whether he will, as an individual, conform to God's ordered plan for his relations with other men or whether he will follow some other course of conduct.

The discovery of these rules by mankind, the discovery of the natural law in its particular application to a given particular situation, may be likened to a discovery of the laws of nature as they apply to other elements of nature.

If man, by his reasoning power, brings about a certain combination of physical circumstances, a reaction will occur which is called the explosion of a thermo-nuclear device, and an entire island will be destroyed. Thus mankind has discovered certain laws of nature, applied them and observed the results. This does not mean to say that every individual man is capable of knowing all the rules which operate to culminate in this effect. A few men, as individuals gifted in intellect and assiduous in study, have analysed and labored mightily to uncover and understand these laws. But they are understandable by the mind of man; this is the all-important principle. The balance of humankind know that the intellect is capable of understanding and applying these rules of physical operation to the universe. They know that much because

they can see an island disappear at the ordered command of he who professes to comprehend. When confronted with this evidence it is difficult to remain skeptical. Yet these conditions are the result, ultimately, of the reasoning power of the intellect of man.

Through this same power of the channel of reasoning we know that there are certain rules of creation concerning men. Men are born, exist and die. They are subject to certain physical laws as described above. The relationship between a man and the other physical features of creation is subject to inexorable laws and rules of conduct. To a large extent, these physical laws govern the relationships between men.

Similarly to the process of discovery whereby man has comprehended some of the laws of nature relating to the physical universes as above set out, so too has he reasoned, studied and analyzed the laws governing the relationships between men on an intellectual plane. Some of the most highly developed intellects ever to be on earth have worked at this problem. Their efforts have not been barren, some of these laws have been discovered, and we have been told what they are. Some of them have been written in the Ten Commandments. Some of them are in the Alkoran of Mohammed. Some are in the writings of the early Greek dramatists, St. Augustine, St. Thomas Aquinas, Thomas Jefferson and many other men who knew some of the rules and stated them in more or less accurate form.

In speaking generally of these rules, the use of vague terms such as justice, law, right, equity, fraternity, liberty and equality is a meaningless gesture unless specific details are in mind. So to be specific I say this, that when a man is confronted with a situation or a condition in which he wants to know the truth as to whether a certain proposed or existing action is just or unjust, he must use the natural law, the law of God the Creator, a law external to the propagating author of the particular action being considered. Now all such queries, all such problems, are almost unsolvable because of the complexity of facts and ideas and the limits of language. However, a measurement can be made, a decision reached and action taken that will in all respects conform to the natural law. But some of these rules and their operation must be taken as true by the majority of men even though they are not understood or comprehended because the rules have been posited and demonstrated by other men. If a physicist tells me that if such and such is done an island will disappear, I believe him. Just so, if a

scholar of the natural law tells me that a certain proposed action is violative of the natural law, and contrary to man's nature, I believe him.

This leads to a discussion relative to the problem of who is or can become a scholar of the natural law. How is he recognized? How is he to be tested? What are his materials? Where are his tools?

The answer lies in the definition of a philosopher. He must first be a disinterested searcher for the truth. The pursuit of knowledge must be his aim. He must be as steadfast to those two principles as his erring nature will permit. His tools must be the recorded observations of other men as to what events have taken place, in a word, it is history. To all this he must apply his reasoning power and arrive at a conclusion; then his conclusion must be compared to the conclusions of other philosophers and an intellectual evaluation must be made. But the dictates or rules of natural law cannot be written down with the detail of a statute book, for each application of the natural law must be separately considered. Several writers have attempted to set down these rules, witness the Decalogue, the Declaration of Independence and other familiar writings. As Loevinger points out, under certain circumstances it may be conformable to the natural law to commit homicide—yet this action violates the literal language of the Ten Commandments.

Where then is the test? It is, to the ordinary human, the intellectual integrity of the man who assumes the role of philosopher. Each man must measure the source of his own moral convictions with the yardsticks of the philosopher, and then act on his own reasoned judgment that the idea is to be accepted or rejected.

As it seems that the real meat of the problem concerns the right of rebellion if such there be, I first seek to find what has been said about that right or fact. The first item that comes to attention is the writing of the early Greek dramatists, Aesschylus, Sophocles and Euripides. They all tell of the rebellion of Antigone against the decree of the king that her brother Polyneices be left unburied and his body desecrated by the birds and the wolves. Here in detail is told the unfortunate consequences that befell the King Creon, as a direct result of his insistence on the unnatural decrée and the resultant rebellion of Antigone. Sophocles, writing in the year 400 B.C. or thereabouts has recognized the existence of a law outside the king or legislature in these words:

Cr: Now tell me thou—not in many words, but briefly—knewest thou that an edict had forbidden this?

An: I knew it: could I help it? It was public.
Cr: And thou didst indeed dare to transgress that law?
An: Yes; for it was not Zeus that had published me that edict; not such are the laws set among men by the Justice who dwells with the gods below; nor deemed I that thy decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of today or yesterday, but from all time, and no man knows when they were first put forth.
Not through dread of any human pride could I answer to the gods for breaking these. Die I must—I knew that well (how should I not?)—even without thy edicts. But if I am to die before my time, I count that a gain: for when any one lives, as I do, compassed about with evils, can such a one find aught but gain in death?
So for me to meet this doom is trifling grief: but if I had suffered my mother's son to lie in death an unburied corpse, that would have grieved me; for this, I am not grieved. And if my present deeds are foolish in thy sight, it may be that a foolish judge arraigns my folly."

The above reference to the ancient poets and their works will at least show us that we are not considering a problem that is new or one that has been given no attention by the millions that have preceded us on this planet. No, Sophocles' work is now about 2,300 years old. The fact that it is still available testifies to the fact that some men who lived between him and us have felt that what he said was worth preserving. Here is the language that he used when considering the existence of the justicestick. He knew the measure of a thing cannot be itself, and if a thing or an idea is to be measured, the measure must be standardized outside of the measured item.

Plato relates a discussion between Crito and Socrates that took place in the prison of Socrates just before his execution. The title of the dialogue is *Crito*. Here Socrates refuses to leave his prison and escape although the means is provided by Crito. The reasoning of Socrates in his refusal seems to hold that one should obey the law. He seems to remain in the prison only because of, and out of respect to the laws of Athens. But a careful study of the writing shows that the idea of Socrates is not that the law is in existence and therefore should be obeyed, but rather it is a careful examination into the basis for a decision as to whether the law should or should not be obeyed under the particular circumstances in which the decision was made. The emphasis is not on the assertion that the law is to be obeyed or not, but rather on the problem of whether to obey or not. Here is the language of Plato on the point:

"Soc: From these premises I proceed to argue the question whether I ought or ought not to try and escape without the consent of the Athenians: and if I am clearly right in escaping, then I will make the attempt; but if not, I will abstain. The other considerations which you mention, of money and loss of character and the duty of educating ones children, are, I fear, only the doctrines of the multitude, who would be as ready to restore people to life, if they were able, as they are to put them to death—and with as little reason. But now, since the argument has thus far prevailed, the only question which remains to be considered is, whether we shall do rightly either in escaping or in suffering others to aid in our escape and paying them in money and thanks, or whether in reality we shall not do rightly; and if the latter, then death or any other calamity which may ensue on my remaining here must not be allowed to enter into the calculation."

From here then, Socrates proceeds to consider whether he would be doing the right thing by attempting to escape, or whether he should remain in the prison. The fact that it would be against the law of Athens to escape was considered as a factor in the reasoning, but it was not the deciding element. For a classic example of the reasoning process to which I have referred, the passages following that quoted should be examined. Here is reasoning at its purest as it attempts to discover a particular application of the natural law to a particular situation. To the skeptic who is unable to see the light, who cannot see the principles of the natural law, nor know how they are arrived at, who does not fathom the ability of man to arrive at a decision in accordance with the principles of natural law, the *Crito* provides an excellent example. The fact that the ultimate decision reached was to obey the law is immaterial to the issue here involved. What is important is the fact that Socrates saw fit to examine the basis of his action although the law had commanded him to act.

For the testimony of another famous and learned scholar, Aristotle, we turn to that phase of his effort which he named *Rhetoric*. Here he tells of his concept of the just and the unjust laws. He refers to the tale of Antigone, told before herein. He affirms the stand taken by Antigone and tells specifically of the value of the thought of Sophocles in the passage quoted above telling of the conversation between Creon and Antigone; her justification for refusing to comply with the law is explained and accepted as the correct and right thing to be done. So does Aristotle approve the philosophy of Sophocles and the other Greeks named. Aristotle refers again and again to natural justice; he refers to the

unwritten law and to the written law. In his writings it seems inherent that he believes that there are such things as good laws and bad laws, just laws and unjust laws; he is continually applying to all law the measure of natural justice. In one place he compares justice to silver, and calls upon the assayist to judge of its quality. In other words, what is needed is the concept of the yardstick of justice or the justicestick.

That the fire of rebellion burned in Rome during its days of power and ascendancy is beyond question. There are two instances in literature that come to attention especially. The first is in Plutarch's life of Tiberius. Plutarch has Tiberius giving a speech wherein he sets out the duty and the responsibility of the people to depose a ruler when he becomes oppressive, and exceeds his authority and the power given to him by the people that have elevated him to the position that he holds. The language of Plutarch is as follows:

> "'A tribune,' he said, 'of the people, is sacred indeed, and ought to be inviolable, because in a manner consecrated to be the guardian and protector of them; but if he degenerate so far as to oppress the people, abridge their powers, and take away their liberty of voting, he stands deprived by his own act of honours and immunities, by the neglect of the duty for which the honour was bestowed upon him. Otherwise we should be under the obligation to let a tribune do this pleasure, though he should proceed to destroy the capitol or set fire to the arsenal. He who should make these attempts would be a bad tribune. He who assails the power of the people is no longer a tribune at all. Is it not inconceivable that a tribune should have power to imprison a consul, and the people have no authority to degrade him when he uses that honor which he received from them, to their detriment? For the tribunes, as well as the consuls, hold office by the people's votes. . . . So likewise a Tribune retains not his inviolability, which for the people's sake was accorded to him, when he offends against the people, and attacks the foundations of that authority from whence he derived his own. We esteem him to be legally chosen tribune who is elected only by the majority of votes; and is not therefore the same person much more lawfully degraded when, by a general consent of them all, they agree to depose him?'"

So spoke Tiberius, according to Plutarch, and there is in those words support for the position taken in this article. There is an attempt to show that other men, men of the highest position in the Roman Empire felt that authority of the government is not valid simply because it is there. There is something that can be done by bureaucrats or tribunes that is wrong and not conformable to the

requirements of law. Here is language that means that if a government official is not doing the right thing he may and must be deposed. From whence Plutarch gets this idea, he does not say, but Tiberius probably knew that he who gives may remove with equal authority that which he has given. Now, the important thing to notice about all this is not that the power to remove is there. That the ultimate authority to rebel is held to be present, that people have the right to rebel, according to Tiberius, is plain. But nowhere does he define the standard he is using. Is a tribune bad because of this act or that one? We must ask, what is the justicestick of Tiberius?

The answer is oppression. There is a lack of authority to oppress inherent in the power that is given to the people who are to exercise the authority of government. It is not reasonable or conformable to the reasonable natural law for a people, or mankind in general, to create a vehicle for their own oppression; and if this is so, then a government created by the mind of man does not have the jurisdiction to oppress the people who have created it. Later in this article, it will be seen that reason is inherent in all of the considerations of the power of governments and the bureaucrats who run them.

A second great instance of rebellion is treated by Plutarch in the life of Marcus Brutus. Here the historian tells of the rebellion of Brutus and Antony in much the same language as might be used by the modern press. There is not much comment about the justice or the merits of either case, but the author tells how it took place, who participated and what the results were. Here is the force of rebellion apparently applied not because of any moral justification, but rather because of the power desires of two contending factions with no consideration given any thought but the power of the two sides, both equally evil when measured against the common standards of the natural law. And yet here is rebellion. How will the skeptics say which side is right? And why should Brutus and his bloodthirsty crew have any moral preference over Caesar? The problem seems insurmountable unless there is an ultimate, absolute standard to which the conduct of both participants can be applied and measured. For if the standard is within the thing itself, then there is no method of determining which side in the affray, if either, was morally or legally correct and entitled to be obeyed because lawfully in power and the rightful lawgiver. What could the people of Rome do except apply the standard of the bayonet? He who has the power is the one who will be obeyed. This is the

ultimate standard of the skeptic, and it removes the distinction between right and might. The argument is old, and here is an opportunity to apply the test. Plutarch does not seem to decide which was the correct side. He merely states the facts and leaves the philosophizing to the reader.

The works of Plutarch are replete with examples of rebellion, and the efforts of the reader will be rewarded by a perusal of the histories even if the only idea extracted from them is the central overpowering presence of the principle of violence in the lives of the great men he biographies. In all cases the emphasis is on the sword, blood and conspiracy. Whether this is Plutarch, or the actualities of the times he portrays, the reader must judge; but unquestionably, the blood is there. A study of Plutarch is a study of the application to the field of government of the principle of might at its purest. Does this mean that because it is, it is right? With these provocative thoughts, we leave Plutarch.

The thought of refusal to serve in the army has been considered by other men at other times. There is little new about the prediction that refusal to serve in the army confronts the refuser with trouble. The manner and method of conscription has caused considerable comment by historians generally. Tacitus is a particular example. In Book IV of his *Histories* he tells of rebellion because of conscription in these words:

> ". . . By command of Vitellius all the Batavian youth was then being summoned to the conscription, a thing naturally vexatious, and which the officials made yet more burdensome by their rapacity and profligacy, while they selected aged and infirm persons, whom they might discharge for a consideration, and mere striplings, but of distinguished beauty (and many attained even in boyhood to a noble stature), whom they dragged off for infamous purposes. This caused indignation, and the ringleaders of the concerted rebellion prevailed upon the people to refuse the conscription. Civilis collected at one of the sacred groves, ostensibly for a banquet, the chiefs of the nation and the boldest spirits of the lower class. When he saw them warmed with the festivities of the night, he began by speaking of the renown and glory of their race, and then counted the wrongs and oppressions which they endured, and all the other evils of slavery. 'There is,' he said, 'no alliance, as once there was; we are treated as slaves. When does even a legate come amongst us, though he come only with a burdensome retinue and in all the haughtiness of power? We are handed over to prefects and centurions, and when they are glutted with our spoils and our blood, then they are changed, and new receptacles for plunder, new terms for spoilation, are

> discovered. Now the conscription is at hand, tearing, we may say forever children from parents, and brothers from brothers. Never has the power of Rome been more depressed. In the winter quarters of the legions there is nothing but property to plunder and a few old men. Only dare to look up, and cease to tremble at the empty names of legions. For we have a vast force of horse and foot; we have the Germans our kinsmen; we have Gaul bent on the same objects. Even to the Roman people this war will not be displeasing; if defeated, we shall still reckon it a service to Vespasian, and for success no account need be rendered.' "

And so a rebellion was born of the evils of oppression by the legions. And yet the legions were there. The skeptics would stand for, agree to and suffer oppression because they have no standard. A reading of Tacitus leads to the query, "Is it according to the belief of the skeptic that one is justified in rebellion if one's sons are dragged off by the conscriptors to provide homosexuals with satisfaction? And if so, why is it wrong, according to what standards do they say that this is not law?" The power of the legion, and the authority of Rome was demanding the action. There it was, either suffer or rebel. There was no alternative, and under the circumstances the student of the natural law will have no difficulty reaching a decision, for the practice of homosexuality is a perversion of the faculties of reproduction given to man, and a use of these functions that is contrary to the reasonable use of them. Inasmuch as the use of the sexual faculties for homosexual purposes is not in accord with reason and is supportable on no logical grounds, but is rather an unreasonable and illogical use of the body, the practice is contrary to the natural law and so contrary to the law of God, and therefore any rule or force supporting the practice is no law at all, but a nullity which cannot be obeyed by anyone because no one is subject to it. Rebellion rises in the hearts of men at such treatment as forced homosexuality under color of the law; and if the skeptics do not feel it, they are academic in the ultimate and not considering the practical effect of emotions upon the application of law to man. Rebellion is inherent under such laws and yet it is only justifiable if at all under a philosophy which recognizes a law as valid only if conformable to some other external standard. Where is the standard of the skeptic? Where is the standard of the skeptic if not in the bayonet and all that it implies? The standard of the natural law is the reason of man.

Tacitus has been used to give this rather powerful example of the causes of rebellion and to point up the necessity of a standard

against which to measure the questions that confront a man when faced with the issue of rebellion. For some of the philosophy behind the problem, let us now look at the writings of St. Augustine. This saintly writer, because he knew so much about the actions and motivations of men, must be heard and listened to. On the problem he spoke in *Confessions* saying:

> "For any part which harmonizeth not with its whole is offensive. But when God commands a thing to be done against the customs or compact of any people, though it were never by them done heretofore, it is to be done; and if intermitted, it is to be restored; and if never ordained, is now to be ordained. For lawful if it be for a king, in the state which he reigns over, to command that which no one before him, or he himself heretofore, had commanded, and to obey him cannot be against the commonweal of the state; (nay, it were against it if he were not obeyed, for to obey princes is a general compact of human society); how much more unhesitatingly ought we to obey God, in all which He commands, the Ruler of all His creatures! For, as among the powers in man's society the greater authority is obeyed in preference to the lesser, so must God above all. . . . Many an action then which in men's sight is disapproved is by Thy testimony approved; and many, by men praised, are (Thou being witness) condemned: because the shew of the action, and the mind of the doer, and the unknown exigency of the period severally vary."

Also in the *City of God*, Augustine refers again and again to the relationship existing between the earthly city, and The City of God. Here he tells of the proper sphere of activity of each community. Here the entire tenor of the words is to the effect that the two cities, the earthly and the heavenly city, are mutually using the laws and customs of the early city so long as the two find it necessary to exist side by side in the earthly area. But the laws, philosophy, and attainments of the earthly city are criticized and the feeling is given out that while the two cities are mutually supporting for the purpose of earthly peace, yet the laws of the earthly city need not be obeyed in the city of God when those rules conflict with the law of God. Some of the pertinent language is as follows:

> "It has come to pass that the two cities could not have common laws of religion, and that the heavenly city has been compelled in this matter to dissent, and to become obnoxious to those who think differently, and to stand the brunt of their anger and hatred and persecutions, except in so far as the minds of their enemies have been alarmed by the multitude of the Christians and quelled by the manifest protection of God accorded to them."

"Even the heavenly city, therefore, while in its state of pilgrimage, avails itself of the peace of earth, and, so far as it can without injuring faith and godliness, desires and maintains a common agreement among men regarding the acquisition of the necessaries of life, and makes this earthly peace bear upon the peace of heaven; for this alone can be truly called and esteemed the peace of the reasonable creatures, consisting as it does in the perfectly ordered and harmonious enjoyment of God and of one another in God."

Thus, the language of the saint shows that there is a difference between the city of God and the earthly city or the city of man. There is a law that is above the laws, or so-called laws, of men. For it is plain to the saint that if a rule or order or decree of the earthly city conflicts with the law of God, it cannot be obeyed. This is particularly true, he feels, in relation to laws concerning religion.

The discussion has now progressed to a point where we can with profit examine some of the writings of Saint Thomas Aquinas to see what it is that man said that makes him the renowned leader of the dogmatist school of philosophical thought in this field. It would be presumptuous to attempt to paraphrase the writings of the saint, and so I will cite verbatim from his work that part which is directly in point:

"On the other hand laws may be unjust in two ways. First, by being contrary to human good, through being opposed to the things mentioned above: either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive not to the common good but rather to his own cupidity or vainglory; or in respect of the author, as when a man makes a law that goes beyond the power committed to him; or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than law, because, as Augustine says, . . . *a law that is not just seems to be no law at all.* Therefore such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should even yield his right. . . .

"Secondly laws may be unjust through being opposed to the Divine good. Such are the laws of tyrants inducing to idolatry, or to any thing else contrary to the Divine law; and laws of this kind must in no way be observed, because as stated in Acts . . . *we ought to obey God rather than men.*"[13]

It is in this passage just quoted that the truth is put unassailably. The natural law is the measuring stick. Here is the soul of the issue. Is a whole equal to the sum of its parts, or is it possible,

13. *Id.* at Q. 96, Art. 4.

logically for a part to be greater than the whole of which it is a part. Cold, calculating logic requires that the law be held to be a lesser creature than the man who has made it. But more of this after we search some more of the available authority on the matter. However, before leaving the great philosopher and leader of the natural law concept, there is one other statement that he made to which we must refer. This is where he states:

> "A tyrannical government is not just, because it is directed, not to the common good, but to the private good of the ruler, as the Philosopher states. Consequently there is no sedition in disturbing a government of this kind, unless indeed the tyrant's rule be disturbed so inordinately that his subjects suffer greater harm from the consequent disturbance than from the tyrant's government. Indeed it is the tyrant rather that is guilty of sedition, since he encourages discord and sedition among his subjects, that he may lord over them more securely; for this is tyranny, since it is ordered to the private good of the ruler and to the injury of the multitude."

The similarity of thought contained in this quotation and that expressed in the Declaration of Independence should be noted.

With this not so strange comparison, we can leave St. Thomas and look to the philosophy of a man who had a somewhat different attitude toward the relationship between government and the governed. This is Hobbes. Now Hobbes is no friend or advocate of the authoritarian dogmatic school, but he had things to say in regard to the matter under discussion here that appear worthy of note. It seems to the writer that the basic premise for most of the language of Hobbes on the subject is contained in *Leviathan*, where he states,

> "Thirdly, because the major part hath by consenting voice declared a sovereign, he that dissented must now consent with the rest; that is, be contented to avow all the actions he shall do, or else justly be destroyed by the rest. For if he voluntarily entered into the congregation of them that were assembled, he sufficiently declared thereby his will, and therefore tacitly covenanted, to stand to what the major part should ordain: and therefor if he refuse to stand thereto, or make protestation against any of their decrees, he does contrary to his covenant, and therefore unjustly."[14]

The language that follows this passage is a logical followup of the premise, and it is carried to its development in the following words,

> "For it has been already shown that nothing the sovereign representative can do to a subject, on what pretence soever, can

14. Leviathan, Part II, Chap. 18.

properly be called injustice or injury; because every subject is author of every act the sovereign doth, so that he never wanteth right to any thing, otherwise than as he himself is the subject of God, and bound thereby to observe the laws of nature."[15]

The next step in the reasoning of Hobbes along the line we pursue, is that the things that a man cannot divest himself of by covenant remain in him, and the sovereign is powerless to require action in accordance with the rights retained or contrary to the rights not covenanted to the state. This is spelled out in the brief passage which reads,

"If the sovereign command a man, though justly condemned, to kill, wound, or maim himself; or not to resist those that assault him; or to abstain from the use of food, air, medicine, or any other thing without which he cannot live; yet hath that man the liberty to disobey."[16]

To continue our search into the wellsprings of rebellion, we turn to John Locke, a writer who gave considerable thought to the foundations of government. In a treatise entitled *Concerning Civil Government* he has examined the right of rebellion in these words,

"It may be demanded here, what if the executive power, being possessed of the force of the commonwealth, shall make use of that force to hinder the meeting and acting of the legislative, when the original constitution or the public exigencies require it? I say, using force upon the people, without authority, and contrary to the trust put in him that does so is a state of war with the people, who have a right to reinstate their legislative in the exercise of their power. For having erected a legislative with an intent they should exercise the power of making laws, either at certain set times, or when there is need of it, when they are hindered by any force from what is so necessary to the society and wherein the safety and preservation of the people consists, the people have a right to remove it by force. In all states and conditions the true remedy of force without authority is to oppose force to it. The use of force without authority always puts him that uses it into a state of war as the aggressor, and renders him liable to be treated accordingly."[17]

And again, at a later time in the same work, Locke gives an answer to the question which is raised throughout this article, namely, who is to be judged.

Locke's answer is this,

". . . the common question will be made; Who shall be judge whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread

15. *Id.* at Chap. 21.
16. *Ibid.*
17. Locke, Concerning Civil Government, Chap. XIII, Par. 155.

amongst the people, when the prince only makes use of his due prerogative. To this I reply, The people shall be judge; for two shall be judge whether his trustee or deputy acts well and according to the trust reposed in him, but he who deputes him and must, by having deputed him, have still a power to discard him when he fails in his trust? If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment, where the welfare of millions is concerned and also where the evil, if not prevented, is greater, and the redress very difficult, dear, and dangerous?

"But, farther, this question, who shall be judge, cannot mean that there is no judge at all. For where there is no judicature on earth to decide controversies amongst men, God in heaven is judge. He alone, it is true, is judge of the right. But every man is judge for himself, as in all other cases so in this, whether another hath put himself into a state of war with him, and whether he should appeal to the supreme jurge, as Jephtha did."[18]

And so along with the eminent Locke, the skeptics cry out, "Who is to be judge?"

But unlike that esteemed gentleman the skeptics have no answer. They are unable to see the light save from within the framework of the bulb. This is again at the heart of the problem. Who is to be the judge? Where is the justicestick? Hobbes was certainly mistaken in many of his ideas; however, he was not confused as to the measuring stick to be applied, or rather he knew that there was such a tool which could be used.

The precurser, the John of the modern skeptics, O. W. Holmes, was a philosopher who advocated the theory of force, and it has been followed by most of the skeptics. By this it is meant that they have believed that law was the application of the force of the community to the arguments between members of that community; there was no such thing as having the force applied rightly or wrongly; there was only the factual concept of the application, and this application was independent of the concept of right or wrong. Or rather, carried to its logical conclusion it was that the application of force was always right; and he who caused it to be applied in his favor was in the right because he had the force of the community on his side. This is the idea that might is right, at least until it is overcome by a mightier power. This is the belief that for the weaker to say he is right is a meaningless gibberish because the stronger has the physical power to bend the weaker to his will; and this is the fact—that the strong are able to act, and the weak are not; therefore the right is always with the might. There have

18. *Id.* at Chap. XIX, Par. 240.

been other thinkers who have seriously examined this problem, and one of them has written his thoughts for our contemplation. He was Jean Rousseau,

> "3. The right of the strongest.
>
> "The strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty. Hence the right of the strongest, which, though to all seeming meant ironically, is really laid down as a fundamental principle. But are we never to have an explanation of this phrase? Force is a physical power, and I fail to see what moral effect it can have. To yield to force is an act of necessity, not of will—at the most, an act of prudence. In what sense can it be a duty?
>
> "Suppose for a moment that this so-called 'right' exists. I maintain that the sole result is a mass of inexplicable nonsense. For, if force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate; and, the strongest being always in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails? If we must obey perforce, there is no need to obey because we ought; and if we are not forced to obey, we are under no obligation to do so. Clearly, the word 'right' adds nothing to force: in this connection, it means absolutely nothing.
>
> "Obey the powers that be. If this means yield to force, it is a good precept, but superflous: I can answer for its never being violated. All power comes from God, I admit; but so does all sickness: does that mean that we are forbidden to call in the doctor? A brigand surprises me at the edge of a wood: must I not merely surrender my purse on compulsion: but, even if I could withhold it, am I in conscience bound to give it up? For certainly the pistol he holds is also a power.
>
> "Let us then admit that force does not create right, and that we are obliged to obey only legitimate powers."[19]

One need add but little to this quote to get it in line with the present tenor of thought. If force is right, then the only wrong in crimes of violence is the fact that the force of the state is stronger than the criminal, and will be brought to bear against him as an individual. As between the criminal and his victim, the criminal is in the right just so long as the force of the state is not being applied to his person, but as soon as the force of the state, in person of the police, is brought up on the side of the victim, then, and only in that event, is the right changed to the side of the victim. And to go on, the force of the state as applied to individuals within the

19. Rousseau, The Social Contract, Book I, Par. 3.

state is in the right just so long as the force of the state is supreme, but when the force of the state is subordinated to another force, such as a conquering hostile power, then the force of the state is not stronger and so the right passes to the conqueror. This means that right is not a concept separate from force, but it is a synonym. It is against this concept that Rousseau wrote in the cited passage, and against which I now write. However, this philosophy of force means that if a man would strive for the right, he must, as Jean said 200 years ago, only strive to be stronger. This is the goal of much of the world today. They believe basically that to be strong is to be right and so they attempt to be strong. It is this philosophy that has led to warfare, killing, bloodletting, bombardment and the almost ceaseless attempt to outgun the others. It lies at the foundations of Russian Communism. It is the main actuating, fundamental principle of the government of Russia, China, most of the Balkans, and all of the puppet countries behind the so-called iron curtain. It has its roots deep in the history of the German people, and its resurgence is bound to come again if given leeway in Germany. It is against this philosophy that the free world must argue if it is to survive, for we who are still free must recognize the forces that are arrayed against us or we will perish. These forces are those that were advocated by Holmes and the skeptics. They can be countered only by those who follow the rebellious of the world who have revolted because they knew there was a right separate from power.

To return to research, Immanuel Kant, who wrote about the science of right, had this to say about the question asked by Locke as to who would be judge,

> "Who is to be the judge in a controversy between the people and the sovereign? For the people and the sovereign are to be constitutionally or juridically regarded as two different moral persons: but the question shows that the people would then have to be the judge in their own cause."

Here Kant denies that there is any right in the people to rebel against the sovereign power. He does not discuss the oppressive possibilities of a sovereign, but the language leads one to believe that Kant knows of no reason that would allow rebellion.

The rebels of the world look to the American revolt from the English for their guidance and leadership on a moral and intellectual as well as an emotional plane. Here is some of the world's great literature on rebellion. The lights of the period were Madison, Hamilton and Jay. The papers that they wrote are the world's

bible of Federalism, and they are rightly named *The Federalist.* Some of the pertinent quotations are these:

From Number 33:

"But it is said that the laws of the Union are to be the supreme law of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A Law, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed. . . . But it will not follow from this doctrine that acts of the larger society which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such."

From Number 78:

"There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid."

These men were guided by the ringing pronouncement of Thomas Jefferson in the Declaration of Independence,

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain analienable rights, that among these are life, liberty and the pursuit of happiness."

These words mean just what they say. They are more than mere egalitarian folderol. They are the essence of a philosophy of rebellion against materialistic skepticism, and the belief that might makes right that is fostered by the skeptics. These rights are above an application of force that may be applied by any earthly government or power. These rights exist in each individual independent of any physical force, and may not be removed from an individual by the use of force. They may be modified, changed or limited or even removed completely under certain circumstances

compatable with the principles of natural law; but they may not be altered one iota by the bare application of power, all else remaining constant. The application or non-application of force to the individual is absolutely immaterial to the existence of the rights which were called rights by the writers of the Declaration cited above. That document is the ringing cry of rebellion at its finest, and its signers are rebels enshrined forever in the minds and memories of the dogmatists. With such inspiration we cannot help but triumph over the forces of materialistic power, and to the task we again reconsecrate "our lives, our fortunes and our sacred honor."

Expediency is the justicestick of the skeptic, the force philosopher, and the materialistic communist atheists. That this idea did not originate recently is apparent from an examination of the writing of another great author of the past, John Stuart Mill. He commented on the problem in *Utilitarianism* in these words,

> "Secondly, the legal rights of which he is deprived, may be rights which ought not to have belonged to him; in other words, the law which confers on him these rights, may be a bad law. When it is so, or when (which is the same thing for our purpose) it is supposed to be so, opinions will differ as to the justice or injustice or infringing it. Some maintain that no law, however bad, ought to be disobeyed by an individual citizen; that his opposition to do it, if shown at all, should only be shown in endeavouring to get it altered by competent authority. This opinion (which condemns many of the most illustrious benefactors of mankind, and would often protect pernicious institutions against the only weapons which, in the state of things existing at the time, have any chance of succeeding against them) is defended, by those who hold it, on grounds of expediency; principally on that of the importance, to the common interest of mankind, of maintaining inviolate the sentiment of submission to law. Other persons, again, hold the directly contrary opinion, that any law, judged to be bad, may blamelessly be disobeyed, even though it be not judged to be unjust, but only inexpedient; while others would confine the license of disobedience to the case of unjust laws: but again, some say, that all laws which are inexpedient are unjust; since every law imposes some restriction on the natural liberty of mankind, which restriction is an injustice, unless legitimated by tending to their good. Among these diversities of opinion, it seems to be universally admitted that there may be unjust laws, and that law, consequently, is not the ultimate criterion of justice, but may give to one person a benefit, or impose on another an evil, which justice condemns. When, however, a law is thought to be unjust, it seems always to be regarded as being so in the same way in which a breach of law is unjust, namely, by infringing somebody's right; which, as it cannot in this case be a legal

> right, receives a different appellation, and is called a moral right. We may say, therefore, that a second case of injustice consists in taking or withholding from any person that to which he has a moral right."

So we see that "expedience" is not something new, untried and now presented for the first time. What makes it frightful at this time is the fact that one-third of the world's people have a government that adheres to the basic tenet of the philosophy; and this will undoubtedly lead to the unhappiness of the people so subjected as well as to that of all minkind. Anguish and bloodshed is the lot of those who believe in the power of the sword.

All of the passages and quotations cited in the preceding pages of this article are indicative of a universally-felt concept that there is, as to every idea, something that is larger than the idea itself. By this is meant that there runs a current through all of the major works on the subject which indicates the universal truth that there is and has to be a test or measurement that is possible for any idea. There is no concept, no idea, no feeling that can stand by itself and say that it is its own measure. For the only thing that can logically adopt such a position is a being which contains all of the attributes that we assign to God.

There is a generally accepted axiom of geometry to the effect that the whole is greater than any of its parts. The axiom may be restated to read that any part of creation is contained in the creator, or that the creator must be larger than the created. The truth of this statement is not open to any serious question. If it is accepted as a premise, then the reasoning may be had that the state is a concept that has its origin, its inception, or its formation from the intellect of man. This means that the state, as an idea, is part of the product of the mind of man. Thus, our reason can arrive at a logical conclusion that the state, as an idea, is inferior to the mind or the intellect of man its creator. The idea or thought that the state is superior to an individual fails to recognize that inherent in every man is the idea of intellect which gave rise to the idea of state, and that to subordinate the individual to the state is to elevate the created over a being which is equal to the creator and possesses the same potential attributes. This is a logically unsound proposition if the premise assumed first above is true. Herein is where the skeptics fail, for they do not see that the state and the ideas that follow from the concept of state, such as statutes, ordinances, legislatures, courts, and administrative bodies, are all concepts inferior

to that of intellect. Intellect is contained, in fact is found in, no other place than in the mind of an individual man.

Herein lies the story of the basis for the disagreement between dogmatism and skepticism. The dogmatist of the natural law recognizes that the intellect and reasoning power of man, having generated the concept of state, are not limited thereby; are not confined by an idea that it produced, but that the intellect is capable of giving rise to other concepts which are greater than that of state and which can, do and must regulate state. These larger concepts are the natural law principles which are applied by man when he is confronted with a situation which seems to place the state over the individual.

The pyramid of jurisdiction which must be envisioned in order to appreciate this reasoning is as follows: the statutes, laws, ordinances, administrative rules and other promulgations of a civil state derive their standing, moral authority, validity or enforceability from the promulgating group, the legislature or judiciary or administrative body; these bodies derive authority from the people of the state as an organized group, the people acting as an entity that is; and the people acting as an entity derive their authority and jurisdiction from the individuals who comprise the group. The individual derives his authority to speak in a group from that which gave him the power or quality of existence, and this is his Creator. This chain of jurisdictional power, as reasoned out, seems unassailable from a logical or from an historical viewpoint. Thus are expressed the many steps or positions that are passed over in many discussions. A failure to admit the existence of any one of them will lead to a gap in the logic which cannot be filled by any other concept.

For instance, if we omit the Creator from this group and admit all else, then we have the position that the ultimate authority springs from the individual, and insofar as he is the font of all authority, it is logically sound to state that he can be subject to no guidance, authority, rules, sanctions, or other control or judgment beyond that imposed by self. Certainly he can create nothing which is superior to himself. This is the position of the anarchist: nothing can, should or will regulate the individual insofar as he does not desire regulation. All laws are suggestions, and can have no moral binding force.

If the people as individuals are omitted, we have a chain wherein the people as a body, as a group concept, have their authority de-

rived directly from God. If the people as a group have their authority derived directly from God, can the number of people who have been given the authority have any bearing on the amount of authority given? If the authority were given only if the totality of mankind participated, it would fail, and God does not fail of His purpose. If the idea of jurisdiction running from God to the people as a group is valid, then the number of men in the group can have no bearing on the amount of power given. If this is so, then the power of the group must spring from the power given to the individuals in the group, for an individual is entitled to the same amount of power as is given to the group.

The next possibility in the chain is that the power or jurisdiction runs from God directly to the person of the ruler concept of state. This is the divine right of kings, and is a theory which has been alleged and tried but found wanting. It is illogical in the premise that a single man or a single family through the right of heredity has the power to govern other men with or without their consent. This principle led to the American Revolution and to the French Revolution. It does not measure up to the requirements of a valid assignment of authority in that the power given is considered to be assigned to a creature not of the assignor's creation. The state as a concept was the idea of man and all of its attributes have been given to it by man. To say that God has given the state, a creature of man, the power to rule over its creator and has removed from man the power to change the attributes of the state which He has created is to place man on the same plane as God or to reduce God to the same plane as man. This has been tried with the never-failing conclusion that the end of the attempt is war, rebellion and ruin for the persons who claim the rights inherent in such a philosophy. The state has only the attributes placed upon the concept by the creator of the idea; and in the case of the state the creator is man. The power of the state springs directly from man. Ultimately, as set out above, the power of all government comes from God.

So as a result of this analysis, the moral compulsion on a man to obey a law springs from the premise that the jurisdiction to enact the law follows the chain outlined above. If for any reason, the chain is broken; if the proper action is lacking in any of the steps, then the moral compulsion to obey is lacking, the pronouncement being considered is no law, is a nullity, and need not be obeyed; rather it must not be obeyed, for to do so is to undermine the power and jurisdiction of the valid lawgiver. So if a purported

law is not enacted by the rightful government deriving its power from the governed, then it is no law and need not be obeyed. So also if a purported act of a validly constituted government is contrary to the ordered and controlled law of God, the natural law, we have a conflict in the will of the ultimate authority, and this is an impossible situation which can only be resolved in favor of the underlying principles of the natural law as opposed to a particular enactment of a state. Thus, a law which is in conflict with the natural law cannot exist, and anything which purports to be law, and at the same time is contrary to the natural law is a nullity and not law, and must be disobeyed. Obedience to any such enactment is giving precedence to a derived power over the direct and inherent power. It places the creature over the creator and violates the premise that the whole is greater than any of its parts.

To restate the application of the natural law, it is this: the tenets of the natural law cannot be written down anywhere for as soon as the law is written it becomes positive law, and natural law is not and cannot be made positive. The human being applying the natural law must first assemble all the facts that can be assembled by his finite and limited mind, and to these he must apply all of the logic and reasoning power at his command together with all the learning he can assimilate; then as a logical, reasoned result he will come forth with a logically and reasonably supportable conclusion that this particular application or action is or is not in conformance with the natural law. This decision will not be logically assailable —it will stand any and every test applied to it by the mind, because it is conformable to nature and the laws of God which have been implanted in the mind of man as a part of his creation. Such is the fundamental nature of the natural law, and it is a law that will continue to hold to its colors all men who are truly interested in the application of learning to law. Such men will continue to improve the state and its subordinate concepts. Such men will organize and develop a better place in which to live. Such men will continue to plan, organize and work for a state that is closer to the principles of God and nearer to realizing the ideal which is a state in which all laws and all enforcement is conformable to the principles of the natural law. Considering the frail nature of man, and his overwhelming propensity to error, the organized dogmatists have continued to improve the relationships between men and their governments at a rate which is truly astounding. True it is that the wars, killings, crime, greed and avarice of humanity at times seem to be as overcoming as a suffocating cloud of poison

gas, but that is the tale of the perennial prophets of doom. A cold and careful analysis of the progress that has been made on earth just during the time of recorded history is enough to give encouragement to the darkest prophet. The improvements can be read in history, and in the never-ending day to day struggle to continue the march toward individual political liberty. Freedom from the great fears of mankind is gradually being achieved by the organized efforts of dogmatists. The organized skeptics have no belief in anything. As Loevinger has stated, organized skeptics have burned no heretics, but neither have organized skeptics done anything else. Organized skeptics have built no cathedrals, they have settled no colonies, established no schools, plowed no new land, defended no ideals with their lives and their blood, they have done nothing to further the lot or station of man. No, organized skeptics have done none of these things, but they have conceived, advocated and upheld a philosophy which supports genocide as a valid relationship between government and governed.

Through the skeptics, we have and will accomplish nothing save reaction, retrogression and degeneration to the slavery of our ancestors, to the jails of Dicken's, the famine of the world, both as to food and ideas. The skeptics merely shrug their shoulders when they hear the words of the poet Markham,

> "Is this the thing the Lord God made and gave
> To have Dominion over land and ocean?"